

AMENDED IN ASSEMBLY APRIL 28, 1999

AMENDED IN ASSEMBLY APRIL 7, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1447

Introduced by Assembly Member Granlund

February 26, 1999

An act to amend Section 1522.1 of the Health and Safety Code, and Sections 11167.5, 11169, 11170 and 11170.5 of the Penal Code, relating to child abuse records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1447, as amended, Granlund. Child abuse records.

Existing law provides that reports of child abuse, as specified, are confidential, and may only be disclosed to certain individuals and entities. Violation of the confidentiality provisions is a misdemeanor.

Existing law also provides that child protective agencies report child abuse cases it investigates, as specified, and that a written notice be sent to a known or suspected child abuser in connection with the child abuser being listed in the Child Abuse Central Index.

This bill would recast and reorganize certain of those provisions relating to the disclosure of confidential records, and providing notice to known or suspected child abusers. The bill would additionally provide in the reorganized provisions that violation of the confidentiality provisions is a

misdemeanor. By creating a new crime, this bill would impose a state-mandated program.

Existing law requires the Department of Justice to maintain the Child Abuse Central Index, ~~an index of child abuse reports~~, including listing the name of known or suspected child abusers.

This bill would authorize the department to delete the name of a known or suspected child abuser from the Child Abuse Central Index when the department receives information that the person has died.

Existing law also requires the department to make relevant information available to child protective agencies, as specified, and also requires the child protective agencies to provide certain notice to known or suspected child abusers listed in the Child Abuse Central Index, as specified.

This bill would delete certain of those provisions that are parallel.

This bill would also make various other technical changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1522.1 of the Health and Safety
2 Code is amended to read:
3 1522.1. Prior to granting a license to, or otherwise
4 approving, any individual to care for children, the
5 department shall check the Child Abuse Central Index
6 pursuant to paragraph (3) of subdivision (b) of Section
7 11170 of the Penal Code. The Department of Justice shall
8 maintain and continually update an index of reports of
9 child abuse by providers and shall inform the department
10 of subsequent reports received from the child abuse
11 index pursuant to Section 11170 of the Penal Code and the

1 criminal history. The department shall investigate any
2 reports received from the Child Abuse Central Index.
3 The investigation shall include, but not be limited to, the
4 review of the investigation report and file prepared by
5 the child protective agency that investigated the child
6 abuse report. The department shall not deny a license
7 based upon a report from the Child Abuse Central Index
8 unless child abuse is substantiated. The ~~Child Abuse~~
9 ~~Central Index maintained by the department shall reflect~~
10 ~~when an individual is either denied a license or is no~~
11 ~~longer interested in being licensed. department shall~~
12 *notify the Child Abuse Central Index when an individual*
13 *is denied a license, withdraws his or her application, or,*
14 *once licensed, fails to renew the license.*

15 SEC. 2. Section 11167.5 of the Penal Code is amended
16 to read:

17 11167.5. (a) The reports required by Sections 11166
18 and 11166.2 shall be confidential and may be disclosed
19 only as provided in subdivision (b). Any violation of the
20 confidentiality provided by this article is a misdemeanor
21 punishable by imprisonment in a county jail not to exceed
22 six months, by a fine of five hundred dollars (\$500), or by
23 both that imprisonment and fine.

24 (b) Reports of suspected child abuse and information
25 contained therein may be disclosed only to the following:

26 (1) Persons or agencies to whom disclosure of the
27 identity of the reporting party is permitted under Section
28 11167.

29 (2) Persons or agencies to whom disclosure of
30 information is permitted under subdivision (b) of Section
31 11170.

32 (3) Persons or agencies with whom investigations of
33 child abuse are coordinated under the regulations
34 promulgated under Section 11174.

35 (4) Multidisciplinary personnel teams as defined in
36 subdivision (d) of Section 18951 of the Welfare and
37 Institutions Code.

38 (5) Persons or agencies responsible for the licensing of
39 facilities which care for children, as specified in Section
40 11165.7.

(6) The State Department of Social Services or any county licensing agency which has contracted with the state, as specified in paragraph (3) of subdivision (b) of Section 11170, when an individual has applied for a community care license or child day care license, or for employment in an out-of-home care facility, or when a complaint alleges child abuse by an operator or employee of an out-of-home care facility.

(7) Hospital scan teams. As used in this paragraph, “hospital scan team” means a team of three or more persons established by a hospital, or two or more hospitals in the same county, consisting of health care professionals and representatives of law enforcement and child protective services, the members of which are engaged in the identification of child abuse. The disclosure authorized by this section includes disclosure among all hospital scan teams.

(8) Coroners and medical examiners when conducting a postmortem examination of a child.

(9) The Board of Prison Terms, who may subpoena an employee of a county welfare department who can provide relevant evidence and reports that both (A) are not unfounded, pursuant to Section 11165.12, and (B) concern only the current incidents upon which parole revocation proceedings are pending against a parolee charged with child abuse. The reports and information shall be confidential pursuant to subdivision (d) of Section 11167.

(10) Personnel from a child protective agency responsible for making a placement of a child pursuant to Section 361.3 of, and Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of, the Welfare and Institutions Code.

(11) Each chairperson of a county child death review team, or his or her designee, to whom disclosure of information is permitted under this article, relating to the death of one or more children and any prior child abuse investigation reports maintained involving the same victim, siblings, or suspects. Local child death review teams may share any relevant information regarding case

1 reviews involving child death with other child death
2 review teams.

3 (c) Authorized persons within county health
4 departments shall be permitted to receive copies of any
5 reports made by health practitioners, as defined in
6 Section 11165.8, pursuant to Section 11165.13, and copies
7 of assessments completed pursuant to Sections 123600 and
8 123605 of the Health and Safety Code, to the extent
9 permitted by federal law. Any information received
10 pursuant to this subdivision is protected by subdivision
11 (e).

12 (d) Nothing in this section requires the Department of
13 Justice to disclose information contained in records
14 maintained under Section 11169 or under the regulations
15 promulgated pursuant to Section 11174, except as
16 otherwise provided in this article.

17 (e) This section shall not be interpreted to allow
18 disclosure of any reports or records relevant to the reports
19 of child abuse if the disclosure would be prohibited by any
20 other provisions of state or federal law applicable to the
21 reports or records relevant to the reports of child abuse.

22 SEC. 3. Section 11169 of the Penal Code is amended
23 to read:

24 11169. (a) A child protective agency shall forward to
25 the Department of Justice a report in writing of every
26 case it investigates of known or suspected child abuse
27 which is determined not to be unfounded, other than
28 cases coming within subdivision (b) of Section 11165.2. A
29 child protective agency shall not forward a report to the
30 Department of Justice unless it has conducted an active
31 investigation and determined that the report is not
32 unfounded, as defined in Section 11165.12. If a report has
33 previously been filed which subsequently proves to be
34 unfounded, the child protective agency shall notify the
35 Department of Justice in writing of that fact and shall not
36 retain the report. The report required by this section shall
37 be in a form approved by the Department of Justice. A
38 child protective agency receiving a written report from
39 another child protective agency shall not send that report
40 to the Department of Justice.

1 (b) At the time a child protective agency forwards a
2 report in writing to the Department of Justice pursuant
3 to subdivision (a), the agency shall also notify in writing
4 the known or suspected child abuser that he or she has
5 been reported to the Child Abuse Central Index. The
6 notice required by this section shall be in a form approved
7 by the Department of Justice. The requirements of this
8 subdivision shall apply with respect to reports forwarded
9 to the department on or after the date on which this
10 subdivision becomes operative.

11 (1) The written notice to the known or suspected child
12 abuser shall not be given until the investigation is
13 completed by the appropriate child protective agencies
14 and the district attorney's office, or the district attorney
15 is not pursuing further investigation.

16 (2) If the known or suspected child abuser is a juvenile,
17 the written notice shall be given to the juvenile's parent
18 or legal guardian.

19 (c) The report required by subdivision (a) shall be
20 confidential ~~and may be disclosed only~~. *The child*
21 *protective agency that forwarded the report shall disclose*
22 *only the underlying investigation report to the following:*

23 (1) Those individuals and entities specified in
24 subdivision (b) of Section 11170 and subdivision (a) of
25 Section 11170.5.

26 (2) Those individuals who have been identified by the
27 Department of Justice as listed in the Child Abuse Central
28 Index.

29 (3) Out-of-state law enforcement agencies conducting
30 an investigation of child abuse only when an agency
31 makes the request for reports of suspected child abuse in
32 writing and on official letterhead, identifying the
33 suspected abuser or victim by name. The request shall be
34 signed by the department supervisor or the requesting
35 law enforcement agency. The written requests shall cite
36 the out-of-state statute or interstate compact provision
37 that requires that the information contained within these
38 reports shall be disclosed only to law enforcement,
39 prosecutorial entities, or multidisciplinary investigative
40 teams, and shall cite the criminal penalties for unlawful

1 disclosure provided by the requesting state or the
2 applicable interstate compact provision. In the absence of
3 a specific out-of-state statute or interstate compact
4 provision that requires that the information contained
5 within these reports shall be disclosed only to law
6 enforcement, prosecutorial entities, or multidisciplinary
7 investigative teams, and criminal penalties equivalent to
8 penalties in California for unlawful disclosure, access shall
9 be denied.

10 Nothing in this subdivision shall preclude a submitting
11 agency prior to disclosure from redacting the name,
12 address, and telephone number of a witness, person who
13 reported the abuse, or victim in order to maintain
14 confidentiality as required by law. Any violation of the
15 confidentiality provided by this article is a misdemeanor
16 punishable by imprisonment in a county jail not to exceed
17 six months, or by a fine of five hundred dollars (\$500), or
18 by both that imprisonment and fine.

19 (d) Child protective agencies shall retain child abuse
20 investigative reports that result in a report filed with the
21 Department of Justice pursuant to subdivision (a) for the
22 same period of time that the information is required to be
23 maintained on the Child Abuse Central Index pursuant
24 to this section. Nothing in this section precludes a child
25 protective agency from retaining the reports for a longer
26 period of time if required by law.

27 (e) The immunity provisions of Section 11172 shall not
28 apply to the submission of a report by a child protective
29 agency pursuant to this section. However, nothing in this
30 section shall be construed to alter or diminish any other
31 immunity provisions of state or federal law.

32 SEC. 4. Section 11170 of the Penal Code is amended
33 to read:

34 11170. (a) (1) The Department of Justice shall
35 maintain an index of all reports of child abuse submitted
36 pursuant to Section 11169. The index shall be continually
37 updated by the department and shall not contain any
38 reports that are determined to be unfounded. The
39 department may adopt rules governing recordkeeping
40 and reporting pursuant to this article.

1 (2) The department shall act only as a repository of
2 reports of investigated child abuse to be maintained in
3 the Child Abuse Central Index pursuant to paragraph
4 (1). The submitting agencies are responsible for the
5 accuracy, completeness, and retention of the reports
6 described in this section. The department shall be
7 responsible for ensuring that the Child Abuse Central
8 Index accurately reflects the report it receives from the
9 submitting agency.

10 (3) Information from ~~a~~ *an unsubstantiated or*
11 *inconclusive* report filed pursuant to subdivision (a) of
12 Section 11169 shall be deleted from the Child Abuse
13 Central Index after 10 years if no subsequent report
14 concerning the same *known or* suspected child abuser is
15 received within that time period. If a subsequent report
16 is received within that 10-year period, information from
17 any prior report, as well as any subsequently filed report,
18 shall be maintained on the Child Abuse Central Index for
19 a period of 10 years from the time the most recent report
20 is received by the department.

21 (4) The Department of Justice may delete a known or
22 suspected child abuser's name from the Child Abuse
23 Central Index at such time as the department receives
24 information that the person has died.

25 (b) (1) The Department of Justice shall notify a child
26 protective agency that submits a child abuse investigation
27 report pursuant to Section 11169, or a district attorney
28 who requests notification, of any information maintained
29 pursuant to subdivision (a) that is relevant to the known
30 or suspected instance of child abuse reported by the
31 agency. A child protective agency shall make that
32 information available to the reporting medical
33 practitioner, child custodian, guardian ad litem
34 appointed under Section 326, or counsel appointed under
35 Section 317 or 318 of the Welfare and Institutions Code,
36 or the appropriate licensing agency, if he or she is treating
37 or investigating a case of known or suspected child abuse.

38 (2) When a report is made pursuant to subdivision (a)
39 or (c) of Section 11166, the investigating agency, upon
40 completion of the investigation or after there has been a

1 final disposition in the matter, shall inform the person
2 required to report of the results of the investigation and
3 of any action the agency is taking with regard to the child
4 or family.

5 (3) The department shall make available to the State
6 Department of Social Services or to any county licensing
7 agency that has contracted with the state for the
8 performance of licensing duties information regarding a
9 known or suspected child abuser maintained pursuant to
10 this section and subdivision (a) of Section 11169
11 concerning any person who is an applicant for licensure
12 or any adult who resides or is employed in the home of an
13 applicant for licensure or who is an applicant for
14 employment in a position having supervisory or
15 disciplinary power over a child or children, or who will
16 provide 24-hour care for a child or children in a
17 residential home or facility, pursuant to Section 1522.1 or
18 1596.877 of the Health and Safety Code, or Section 8714,
19 8802, 8912, or 9000 of the Family Code.

20 (4) For purposes of child death review, the
21 Department of Justice shall make available to the
22 chairperson, or the chairperson's designee, for each
23 county child death review team, or the State Child Death
24 Review Council, information maintained in the Child
25 Abuse Central Index pursuant to subdivision (a) of
26 Section 11170 relating to the death of one or more
27 children and any prior child abuse investigation reports
28 maintained involving the same victims, siblings, or
29 suspects. Local child death review teams may share any
30 relevant information regarding case reviews involving
31 child death with other child death review teams.

32 (5) The department shall make available to child
33 protective agencies, or court investigators acting
34 pursuant to Section 1513 of the Probate Code, responsible
35 for placing children or assessing the possible placement
36 of children pursuant to Section 281.5 of the Welfare and
37 Institutions Code, Article 6 (commencing with Section
38 300), Article 7 (commencing with Section 305), Article 10
39 (commencing with Section 360), or Article 14
40 (commencing with Section 601) of Chapter 2 of Part 1 of

1 Division 2 of the Welfare and Institutions Code, Article 2
2 (commencing with Section 1510) or Article 3
3 (commencing with Section 1540) of Chapter 1 of Part 2
4 of Division 4 of the Probate Code, information regarding
5 a known or suspected child abuser contained in the index
6 concerning any adult residing in the home where the
7 child may be placed, when this information is requested
8 for purposes of ensuring that the placement is in the best
9 interests of the child. The department is exempt from the
10 requirements of Section 1798.18 of the Civil Code;
11 ~~however.~~ *However*, upon receipt of relevant information
12 concerning child abuse investigation reports contained in
13 the index from the Department of Justice pursuant to this
14 subdivision, the child protective agency or court
15 investigator shall notify, in writing, the person listed in
16 the Child Abuse Central Index that he or she is in the
17 index. The notification shall include the name of the
18 reporting agency and the date of the report.

19 (6) Persons or agencies, as specified in subdivision (b),
20 if investigating a case of known or suspected child abuse,
21 or the State Department of Social Services or any county
22 licensing agency pursuant to paragraph (3), or a child
23 protective agency or court investigator responsible for
24 placing children or assessing the possible placement of
25 children pursuant to paragraph (5), to whom disclosure
26 of any information maintained pursuant to subdivision
27 (a) is authorized, are responsible for obtaining the
28 original investigative report from the reporting agency,
29 and for drawing independent conclusions regarding the
30 quality of the evidence disclosed, and its sufficiency for
31 making decisions regarding investigation, prosecution,
32 licensing, or placement of a child.

33 (7) (A) Whenever information contained in the
34 Department of Justice files is furnished as the result of an
35 application for employment or licensing pursuant to
36 paragraph (3), the Department of Justice may charge the
37 person or entity making the request a fee. The fee shall
38 not exceed the reasonable costs to the department of
39 providing the information. The only increase shall be at
40 a rate not to exceed the legislatively approved

1 cost-of-living adjustment for the department. In no case
2 shall the fee exceed fifteen dollars (\$15).

3 (B) All moneys received by the department pursuant
4 to this section to process trustline applications for
5 purposes of Chapter 3.35 (commencing with Section
6 1596.60) of Division 2 of the Health and Safety Code shall
7 be deposited in a special account in the General Fund
8 that is hereby established and named the Department of
9 Justice Child Abuse Fund. Moneys in the fund shall be
10 available, upon appropriation by the Legislature, for
11 expenditure by the department to offset the costs
12 incurred to process trustline automated child abuse
13 system checks pursuant to this section.

14 (C) All moneys, other than that described in
15 subparagraph (B), received by the department pursuant
16 to this paragraph shall be deposited in a special account
17 in the General Fund which is hereby created and named
18 the Department of Justice Sexual Habitual Offender
19 Fund. The funds shall be available, upon appropriation by
20 the Legislature, for expenditure by the department to
21 offset the costs incurred pursuant to Chapter 9.5
22 (commencing with Section 13885) and Chapter 10
23 (commencing with Section 13890) of Title 6 of Part 4, and
24 Section 290.2, and for maintenance and improvements to
25 the statewide Sexual Habitual Offender Program and the
26 DNA offender identification file (CAL-DNA) authorized
27 by Chapter 9.5 (commencing with Section 13885) of Title
28 6 of Part 4 and Section 290.2.

29 (c) The department shall make available any
30 information maintained pursuant to Section 11169 to
31 out-of-state law enforcement agencies conducting
32 investigations of known or suspected child abuse only
33 when an agency makes the request for information in
34 writing and on official letterhead, identifying the
35 suspected abuser or victim by name. The request shall be
36 signed by the department supervisor of the requesting
37 law enforcement agency. The written requests shall cite
38 the out-of-state statute or interstate compact provision
39 that requires that the information contained within these
40 reports shall be disclosed only to law enforcement,

1 prosecutorial entities, or multidisciplinary investigative
2 teams, and shall cite the criminal penalties for unlawful
3 disclosure of any confidential information provided by
4 the requesting state or the applicable interstate compact
5 provision. In the absence of a specified out-of-state statute
6 or interstate compact provision that requires that the
7 information contained within these reports shall be
8 disclosed only to law enforcement, prosecutorial entities,
9 or multidisciplinary investigative teams, and criminal
10 penalties equivalent to the penalties in California for
11 unlawful disclosure, access shall be denied.

12 (d) Any person may determine if he or she is listed in
13 the Child Abuse Central Index by making a request in
14 writing to the Department of Justice. The request shall be
15 notarized and include the person's name, address, date of
16 birth, and either a social security number or a California
17 identification number. Upon receipt of a notarized
18 request, the Department of Justice shall make available
19 to the requesting person information identifying the date
20 of the report and the submitting agency. The requesting
21 person is responsible for obtaining the investigative
22 report from the submitting agency and the submitting
23 agency shall disclose the report pursuant to subdivision
24 (c) of Section 11169.

25 (e) If a person is listed in the Child Abuse Central
26 Index only as a victim of child abuse, and that person is
27 18 years of age or older, that person may have his or her
28 name removed from the index by making a written
29 request to the Department of Justice. The request shall be
30 notarized and include the person's name, address, social
31 security number, and date of birth. The name of the
32 suspected or known abuser will be maintained for the
33 period of time specified in paragraph (3) of subdivision
34 (a).

35 SEC. 5. Section 11170.5 of the Penal Code is amended
36 to read:

37 11170.5. (a) Notwithstanding paragraph (3) of
38 subdivision (b) of Section 11170, the Department of
39 Justice shall make available to a licensed adoption agency,
40 as defined in Section 8530 of the Family Code,

1 information regarding a known or suspected child abuser
2 maintained in the child abuse index, pursuant to
3 subdivision (a) of Section 11170, concerning any person
4 who has submitted to the agency an application for
5 adoption.

6 (b) Whenever information contained in the
7 Department of Justice files is furnished as the result of an
8 application for adoption pursuant to subdivision (a), the
9 Department of Justice may charge the agency making
10 the request a fee. The fee shall not exceed the reasonable
11 costs to the department of providing the information. The
12 only increase shall be at a rate not to exceed the
13 legislatively approved cost-of-living adjustment for the
14 department. In no case shall the fee exceed fifteen dollars
15 (\$15).

16 (c) All moneys received by the department pursuant
17 to this subdivision shall be deposited in the Department
18 of Justice Sexual Habitual Offender Fund pursuant to
19 subparagraph (A) of paragraph (7) of subdivision (b) of
20 Section 11170.

21 SEC. 6. No reimbursement is required by this act
22 pursuant to Section 6 of Article XIII B of the California
23 Constitution because the only costs that may be incurred
24 by a local agency or school district will be incurred
25 because this act creates a new crime or infraction,
26 eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section
28 17556 of the Government Code, or changes the definition
29 of a crime within the meaning of Section 6 of Article
30 XIII B of the California Constitution.

